

SENATE BILL REPORT

E4SHB 1412

As Reported by Senate Committee On:
Law & Justice, February 24, 2022

Title: An act relating to legal financial obligations.

Brief Description: Concerning legal financial obligations.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Simmons, Goodman, Davis, Valdez, Berry, Taylor, Fitzgibbon, Peterson, Ormsby, Harris-Talley, Pollet and Macri).

Brief History: Passed House: 2/10/22, 70-24.

Committee Activity: Law & Justice: 2/17/22, 2/24/22 [DPA-WM, DNP, w/oRec].

Brief Summary of Amended Bill

- Allows a court to not impose or waive full or partial restitution and accrued interest owed to any insurer or state agency, except restitution owed to the Department of Labor and Industries for the crime victims compensation program, if the offender does not have the current or likely future ability to pay.
- Allows a court to not impose interest on any restitution or to waive or reduce accrued interest during an offender's period of incarceration after considering several factors including whether the offender is indigent and the victim's input.
- Establishes a revised standard of indigency for purposes of a number of provisions applicable to legal financial obligations.
- Eliminates both the crime victim penalty assessment and the DNA database fee and establishes alternative state funding.

SENATE COMMITTEE ON LAW & JUSTICE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen and Salomon.

Minority Report: Do not pass.
Signed by Senators McCune, Assistant Ranking Member; Honeyford.

Minority Report: That it be referred without recommendation.
Signed by Senator Padden, Ranking Member.

Staff: Ryan Giannini (786-7285)

Background: Indigency Standard. A person is indigent if, at any stage of a court proceeding, they are:

- receiving certain types of public assistance;
- involuntarily committed to a public mental health facility;
- receiving an annual income after taxes of 125 percent or less of the federal poverty level; or
- unable to pay the anticipated cost of counsel for the matter before the court because their available funds are insufficient to pay any amount for the retention of counsel.

Legal Financial Obligations. When a defendant is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. LFOs include victim restitution; crime victims' compensation fees; costs associated with the offender's prosecution and sentence; fines; penalties; and assessments.

Restitution. Restitution is a sum ordered by the sentencing court to be paid by the offender over a specified period of time as payment for a victim's damages. A restitution order must be based on easily ascertainable damages for injury to property, expenses incurred for treatment of personal injuries, lost wages, and counseling that is reasonably related to the offense.

A sentencing court must order restitution whenever a victim of the crime is entitled to crime victims compensation benefits. A court must order restitution when the offender is convicted of an offense that results in personal injury or property damage unless extraordinary circumstances exist that make restitution inappropriate. In ordering restitution, the court must consider the total amount of restitution owed, the offender's present, past, and future ability to pay, and any assets the offender may have. The court may modify the terms of the restitution order, but may not reduce the total amount of restitution ordered.

Costs. Costs that may be imposed on a defendant include public defense costs, jury fees, criminal filing fees, bench warrant fees, deferred prosecution fees, pretrial supervision fees, witness costs, incarceration costs, and other costs as ordered by the court.

A court may not impose costs on an offender who is indigent at the time of sentencing. An offender who is not in default in the payment of costs may request the court to convert unpaid costs to community restitution hours at the rate of the minimum wage if payment of the amount due will result in manifest hardship to the defendant. Manifest hardship exists when the defendant is indigent.

Interest on Legal Financial Obligations. Restitution imposed in a judgment bears interest from the date of judgment until payment at the rate applicable to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26 week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the applicable interest rate for over two decades. Upon motion of an offender, the court may reduce interest on restitution only if the principal has been paid in full and as an incentive for the offender to meet other LFOs.

Under legislation enacted in 2018, interest does not accrue on nonrestitution LFOs as of June 7, 2018. Upon motion of an offender, the court must waive all interest on nonrestitution LFOs that accrued prior to June 7, 2018.

Time Period for Enforcement of Legal Financial Obligations. An offender ordered to pay LFOs under a superior court judgment for an offense committed on or after July 1, 2000, remains under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the offense. For crimes committed prior to July 1, 2000, the offender is under the court's jurisdiction for purposes of enforcement of the obligation for ten years following release from total confinement or ten years after entry of the judgment and sentence, whichever is longer. Prior to the expiration of the initial ten year period, the superior court may extend the judgment an additional ten years for payment of the LFO.

Restitution obligations ordered as a result of a conviction in a court of limited jurisdiction may be extended beyond the initial ten year enforcement period only if the court finds the offender has not made a good faith attempt to pay.

Noncompliance. An offender may not be sanctioned for failure to pay LFOs unless the failure to pay is willful. An offender's failure to pay is willful only if the offender has the current ability to pay but refuses to do so. When determining an offender's ability to pay, the court must consider the offender's income and assets; basic living costs and other liabilities including child support and other LFOs; and bona fide efforts to acquire additional resources. An offender who is indigent is presumed to lack the current ability to pay.

When a court is considering sanctions for failure to pay LFOs, if the court finds that failure to pay is not willful the court may, and if the defendant is indigent the court shall, either:

- modify the terms of payment;
- reduce or waive nonrestitution amounts; or
- allow conversion of nonrestitution obligations to community restitution hours, if the

jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage for each hour of community restitution.

The crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours.

Crime Victim Penalty Assessment. A crime victim penalty assessment must be imposed on any adult convicted of a criminal offense in superior court, with some exceptions for vehicle-related offenses. The penalty assessment is \$500 in the case of a felony or gross misdemeanor offense and \$250 in the case of a misdemeanor offense. A juvenile offender who is found to have committed a most serious offense must be assessed a penalty assessment in the amount of \$100. One hundred percent of the crime victim penalty assessment amounts received by the county treasurer must be deposited into a fund for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. The crime victim and witness fund is a part of the crime victim compensation program that is managed by the Department of Labor and Industries (L&I).

Crime Victims Compensation Program. Victims of crimes are entitled to apply for crime victims compensation benefits from the crime victims compensation program. After an application for compensation benefits has been made and approved, L&I reimburses the crime victim. This reimbursement creates a debt owed by the offender to L&I. If a person has been found to have committed a criminal act that results in the payment of benefits to a victim and the court in the criminal proceeding did not enter a restitution order, then L&I can, within one year of the sentence, petition the sentencing court for entry of a restitution order.

DNA Collection Fee. A biological sample must be collected for purposes of DNA identification analysis from every person convicted of a felony or certain other offenses, and the court must impose a \$100 fee as part of the sentence for the offense. The court is not required to impose the DNA collection fee if the state has previously collected the offender's DNA as a result of a prior conviction. Eighty percent of the fee is deposited into the nonappropriated DNA Database Account, and these funds may be used only for the operation and maintenance of the DNA Database. The remaining 20 percent of the fee is transmitted to the local agency that collected the biological sample.

Criminal Filing Fee. Upon conviction or plea of guilty, a defendant in superior court is liable for a fee of \$200, and a defendant in a court of limited jurisdiction is liable for a fee of \$43. These fees may not be imposed on a defendant who is indigent.

Summary of Amended Bill: Indigency Standard. A new definition of indigent is provided. A defendant is indigent if the defendant:

- is receiving certain types of public assistance, involuntarily committed to a public mental health facility, or receiving an annual income after taxes of 125 percent or less

- of the federal poverty level;
- is homeless or mentally ill as defined under the community behavioral health services act;
- has household income above 125 percent of the federal poverty guidelines and has recurring basic living costs that render the defendant without the financial ability to pay; or
- has other compelling circumstances that exist that demonstrate an inability to pay.

The new definition of indigent applies for purposes of the following provisions:

- a court may not order an offender to pay costs if the offender is indigent;
- noncompliance with LFO payment obligations is not willful, and therefore not subject to sanction, if the offender lacks the ability to pay, and an offender who is indigent is presumed to lack the ability to pay;
- an offender may petition for remission of fines or costs where manifest hardship exists, and manifest hardship is presumed where the offender is indigent;
- a court may, following an offender's release from total confinement, waive or reduce interest on restitution that accrued during the offender's period of incarceration if the court finds that the offender is indigent and after considering the victim's input, if any;
- the court may not impose the criminal filing fee on an offender who is indigent;
- the court may waive or reduce any crime victim penalty assessment imposed prior to the effective date if the offender is indigent and does not have the current or likely future ability to pay; and
- the court must allow an indigent offender to pay LFOs in designated installments or within designated periods.

Restitution. A court may at any time, including at sentencing, determine that an offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution to an insurer or state agency, except restitution owed to the Department of Labor and Industries for the crime victims compensation program, if the court finds that the offender is currently indigent or does not likely have the future ability to pay. Insurer does not include an individual self-insurance program or joint self-insurance program.

The court may elect not to impose interest on any restitution ordered by the court after inquiring into and considering the following factors:

- whether the offender is indigent under statutory standards for appointment of counsel or under court rules;
- the offender's available funds and other liabilities, including child support and other LFOs; and
- whether the offender is homeless or mentally ill as defined under the community behavioral health services act.

The court also must consider input from the victim as to hardship caused to the victim if

interest on restitution is not imposed. The court may consider any other information the court believes, in the interest of justice, relates to the determination of whether or not to impose interest on restitution.

Upon motion of an offender, a court may waive any interest imposed on restitution if the restitution principal has been paid in full. Without regard to whether restitution principal has been paid, after an offender's release from total confinement, the court may waive or reduce interest on restitution that accrued during incarceration if the offender does not have the current or likely future ability to pay. The prosecuting attorney must make reasonable efforts to notify the victim entitled to restitution of the hearing, and the court must consider any input from a victim on the impact of waiving restitution interest.

Time Period for Enforcement of Legal Financial Obligations. The time for enforcing a judgment for nonrestitution LFOs is revised. Regardless of when the judgment was entered, nonrestitution LFOs may be enforced during the ten year period following the offender's release from confinement or within ten years of the judgment and sentence, whichever is later. The judgment may be extended beyond the initial tenyear enforcement period only if the court finds that the offender is not indigent or has the likely future ability to pay.

Remission of Fines and Costs. A defendant may at any time petition the sentencing court for remission of the payment of any fines or costs, or unpaid portion of fines or costs, if the defendant had not willfully failed to pay the obligation. The court may remit all or part of the amount due in fines or convert the amount to community restitution hours if the court finds that payment of the amount due will impose a manifest hardship on the defendant or the defendant's immediate family. Manifest hardship exists where the defendant is indigent.

Crime Victim Penalty Assessment. The crime victim penalty assessment is eliminated. Upon motion by the defendant, the court may waive or reduce any previously imposed crime victim penalty assessment if the court finds that the defendant is indigent and lacks the current or likely future ability to pay. Provisions indicating that the crime victim penalty assessment may not be reduced, waived, or converted to community restitution hours are removed.

The superior court will no longer require the payment of a crime victim penalty assessments as a condition of suspension of sentence or probation but may require monetary payment as the court deems necessary for various circumstances, such as restitution to any person or persons who may have suffered loss or damage by the commission of the crime in question.

A new crime victim and witness assistance account is created in the state treasury. On January 1, 2023, and April 1, 2023, the state treasurer must transfer \$975,000 into the account from the general fund. Beginning with fiscal year 2024, the state treasurer must transfer \$3.9 million into the account from the general fund, divided into four quarterly deposits. Each fiscal year thereafter, the state treasurer must increase the total transfer by

the fiscal growth factor. The state treasurer must make quarterly distributions of moneys in the account to counties, which may use the funds only for comprehensive crime victim and witness programs.

DNA Collection Fee. The DNA collection fee is eliminated. Upon motion of the offender, the court must waive all but one previously imposed DNA collection fee.

For fiscal year 2023, the Legislature must appropriate \$300,000 for deposit into the state DNA Database Account, and for fiscal year 2024, the Legislature must appropriate \$600,000 for deposit into the account. The Legislature must increase the total appropriation each subsequent fiscal year after 2024 by the fiscal growth factor. The Washington State Patrol must expend 80 percent of these funds for maintenance and operation of the DNA Database and 20 percent of the funds for distribution to the agency responsible for collection of the offender's biological sample.

Criminal Filing Fee. Upon motion of the offender, the court may waive or reduce any previously imposed superior court criminal filing fee if the court finds that the defendant is indigent.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Corrects statutory references to the definition of "fiscal growth factor."
- Excepts restitution owed to the Department of Labor and Industries for the Crime Victims Compensation Program from being waived or reduced by a court.

Appropriation: \$1,950,000 of the general fund is appropriated to the State Treasurer for a state crime victim and witness assistance account for FY2023. \$300,000 is appropriated to the State Treasurer for the state DNA database account for FY2023.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2023. Includes a null and void clause.

Staff Summary of Public Testimony on Engrossed Fourth Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The current system of LFOs is untenable because it disproportionately punishes people of color and those who are poor. People reentering society after incarceration already face tremendous barriers, and forcing them to pay LFOs only causes further instability. Only a small percentage of LFOs are actually collected. This bill provides much needed relief and is limited in scope to those who cannot pay and are struggling to afford their basic needs. The bill balances giving judges discretion to waive, reduce, or not impose LFOs while still being able to enforce sentences. This bill establishes alternative funding that does not rely

on LFOs. This will allow people to exit the criminal legal system, help Washingtonians living in poverty, and create a more fair and effective justice system. The bill was developed over two years of hard work and compromise and is supported by various stakeholder groups.

OTHER: This bill was developed over a long process of collaboration. The crime victim penalty assessment is significant to prosecutor offices because such penalty assessments fund victim and witness services in a prosecutor's office. Providing a stable state fund for victim and witness services provides a way to guarantee that these individuals can be provided services through the prosecutor's office. An unexpected issue is that the bill allows waivers for restitution owed to state agencies, but the crime victim compensation fund technically falls under the purview of a state agency. The crime victim compensation fund provides funding for victims that suffer some harm or loss. Restitution for victims who suffered harm or loss is provided at a sentencing hearing or restitution hearing. The ability of the victim compensation fund to restore victims should not be hindered.

Persons Testifying: PRO: Representative Tarra Simmons, Prime Sponsor; Marcy Bowers, Statewide Poverty Action Network; Kari Reardon, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Dr. Alexes Harris, University of Washington ; Judge David Keenan, Washington State Minority and Justice Commission and the Superior Court Judges Association; Amber Letchworth, I Did the Time; Kelly Olson, Civil Survival Project; Nick Allen, Columbia Legal Services; Brooke Davies, Justice Action Network.

OTHER: Russell Brown, WA Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.